

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

HUNTERS CAPITAL, LLC, et al.,

Plaintiffs,

vs.

CITY OF SEATTLE,

Defendant.

Case No. 2:20-cv-00983-TSZ

DECLARATION OF MICHAEL MALONE
IN SUPPORT OF PLAINTIFFS'
RESPONSE TO CITY OF SEATTLE'S
MOTION FOR SPOILIATION

Noting Date: November 15, 2022

I Michael Malone, declare as follows:

1. I am the CEO of Hunters Capital, LLC. I am involved in the management of Hunters Property Holdings LLC and Greenus Building, Inc. (collectively, these entities above are referred to herein as the "Hunters Capital Entities"), but not on a day-to-day basis. I have a limited role in day-to-day operations of the Hunters Capital Entities as I am 78 and travel throughout the year at various times.

2. This declaration relates to the Plaintiffs' response to the City of Seattle's Motion for Spoliation against Plaintiffs Hunters Capital, et al. (Dkt. No. 107).

3. I used a phone during CHOP in June of 2020, but I am not tech savvy.

4. I turned in my phone to counsel for imaging in this case on May 3, 2021. It was

1 returned to me shortly thereafter, and I continued to use the phone. At the time I turned my
2 phone in, I was not aware of any issues with text messages on that phone.

3 5. I lost my phone when I was in Hunters, WA at the end of May 2021. The phone
4 was found and shipped to Hunters Capital's Seattle office via UPS. The package was left on the
5 street in front of Hunters Capital's Broadway Ave. office by the UPS delivery person, but it was
6 stolen on June 1, 2021, before the package could be retrieved by a Hunters Capital employee.

7 6. We attempted to locate the stolen phone, but were unsuccessful.

8 7. Sometime later in 2021, I learned that the image of my phone that was taken on
9 May 3, 2021, contained no text messages older than March 26, 2021. I do not know why there
10 were no text messages older than March 26, 2021, on the image of my old phone. We attempted
11 to recover the messages, but we were unable to recover the old messages through other searches
12 of back-up files in iCloud.

13 8. I never cleaned out my entire text message history on the phone that I used in the
14 summer of 2020.

15 9. While I may have periodically deleted some random messages such as marketing,
16 phishing or spam text messages on my phone in 2020, I never intentionally deleted text messages
17 that would be relevant to this case or regarding CHOP or that would have been relevant to the
18 Hunters Capital business.

19 10. Most of my messages concerning CHOP included messages with Jill Cronauer,
20 Michael Oaksmith, and a few messages with Jenny Durkan. Both Ms. Cronauer and Mr.
21 Oaksmith produced text messages in this case, and they naturally included messages that
22 included me.

23 11. The City claims in its Motion for Spoliation that I "spearheaded" this lawsuit.
24 There was a large community response to CHOP of concerned businesses that were being
25 negatively affected by CHOP, and I was only a part of a greater effort to stop the lawless and
26 dangerous occupation of a portion of Seattle.

DATED this 25th day of October, 2022 at Southrop, GL7 3PW, England.

Michael Malone

MORGAN, LEWIS & BOCKIUS LLP
ATTORNEYS AT LAW
1301 SECOND AVENUE, SUITE 2800
SEATTLE, WASHINGTON 98101
TEL +1.206.274.6400 FAX +1.206.274.6401